

**§12-58-2 Safety and health professional.** (a) Safety and health professional certification.

- (1) Safety and health professionals, including those employed by the department, shall be certified by the department in accordance with procedures and criteria set forth in this rule.
- (2) Certification of safety and health professionals.
  - (A) Any individual performing an audit for a participating employer under subsection (b), including safety and health professionals employed by the department, shall be certified by the director.
  - (B) In order to be eligible for certification, individuals must exhibit knowledge and familiarity with the content and application of the Hawaii Occupational Safety and Health standards and regulations. The applicant must possess one of the following qualifications and provide relevant documentation such as college transcripts, copies of certifications or licenses to support the application:
    - (i) Certification as a Certified Safety Professional (CSP) granted by the Board of Certified Safety Professionals (BCSP);
    - (ii) Certification as a Certified Industrial Hygienist (CIH) granted by the American Board of Industrial Hygiene (ABIH);
    - (iii) State licensure as a professional engineer, with five years of documented professional safety and health experience within the last seven years prior to the filing of the application for certification;
    - (iv) A bachelor of science degree in industrial hygiene, safety, occupational safety and health, biology, chemistry, environmental health and science, physics, engineering, or a related field, with five years documented professional safety and health experience deemed acceptable by the director within the last seven years prior to the filing of the application for certification; or
    - (v) Nine years of documented professional safety and health experience deemed acceptable to the director within the last ten years prior to the filing of the application for certification.
  - (C) All applications for certification as a safety and health professional shall be submitted to the director in writing on forms provided for the purpose or equivalent format and shall be accompanied by:
    - (i) A reference from the applicant's current or past supervisor attesting to the quality and the breadth of the qualifying work experience or self-certification where the applicant is self employed. Both the reference from the applicant's current or past employer and the self-certification must contain evidence that the applicant helped employers reduce their injury and illness incidence rates and workers' compensation costs;
    - (ii) A reference from a safety and health professional familiar with the applicant's work experience and character; and

- (iii) Any other information or documentation deemed necessary by the director.
- (D) Applications shall be:
  - (i) Valid for six months. The six months shall begin upon the director's receipt of the first item submitted for the application;
  - (ii) Considered a complete application when all items in 2(B) and (C) have been submitted to the director; and
  - (iii) Accompanied by a non-refundable application fee of \$50, as required in section 12-56-2 and shall be sent to the address specified in the application package.
- (E) Within forty-five days of the receipt of a complete application packet, the director shall notify the certificate applicant in writing of the issuance or denial of the certification. Notification of denial of a certificate on any grounds shall set forth the grounds for such denial. An applicant denied a certificate on any grounds other than failure to complete a certificate application may request a reconsideration of denial meeting by submitting a written request for a reconsideration conference within ten calendar days of the receipt of such denial. A decision will be sent to the applicant within ten calendar days after the conference.
- (F) If the original denial is upheld at the reconsideration of denial conference, the applicant may then request a hearing by submitting a written request for a hearing within ten calendar days of the receipt of the second denial. The hearing shall be held by the director or the director's designee. A decision on the hearing will be sent to the applicant within ten calendar days. The results of the hearing shall be final.
- (G) Upon approval of the application for certification, applicants will be assessed a non-refundable certification fee of \$300 which shall be payable prior to the issuance of the certificate.
- (H) Certificates are valid for three years from the date of issuance.
  - (i) Certificates are renewable every three years for a non-refundable fee of \$100.
  - (ii) If a certificate is renewed before the expiration date of the current certificate, the renewal will become effective when the current certificate expires. No renewal or certificate shall be issued more than thirty days before the expiration date of the certificate or ninety days after the expiration date of the current certificate.
- (3) Suspension or revocation of certification.
  - (A) A certified safety and health professional certificate may be suspended or revoked by the director upon a determination by the director that:
    - (i) The safety and health professional's hazard analysis or safety and health program development is in conflict with state safety and health standards applicable to the worksite;

- (ii) The safety and health professional knowingly included false or misleading information in any report required by subsection (b); or
  - (iii) The safety and health professional no longer meets the qualifications for certification set forth in subsection (a) (2).
- (B) When in the process of determining whether the certification should be revoked or suspended, the safety and health professional shall make available all documents requested by the department. Safety and health audit reports received by the department for the purpose of paragraph (3) shall not be used as evidence in any occupational safety and health inspection or investigation against the employer named in the audit.
- (C) Upon making a determination that a safety and health professional's certificate should be revoked or suspended, the director shall inform the safety and health professional in writing, setting forth the reasons for the determination. The safety and health professional may request a hearing on the matter by submitting a written request for a hearing within ten calendar days of receipt of the notice of revocation or suspension. The hearing shall be held by the director or the director's designee.
- (D) A safety and health professional's certificate which has been suspended or revoked may be reinstated under the following circumstances:
  - (i) If the revocation or suspension was premised upon a failure of the safety and health professional to meet the qualifications for certification set forth in subsection (a) (2), upon a demonstration by the safety and health professional that those qualifications have been met.
  - (ii) If the revocation or suspension was premised upon findings described in subparagraph (A) (i) or (ii), upon the director's review and approval of the reapplication for certificate by the individual. Reapplication may be submitted no sooner than one year after the expiration of the period of suspension or revocation established by the director.
- (E) An individual applying for reinstatement of a safety and health professional certificate shall be subject to the same procedures as those which pertained to application for the original certificate.
- (4) Severability. If any provision of this standard or the application thereof to any person or circumstance is held invalid, invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provisions or applications and to this end the provisions of this rule are declared to be severable.
- (5) Applicability of other state and federal regulations. Nothing contained in this standard shall be read or applied in a manner to abrogate or otherwise limit the responsibility of an employer subject to this standard to comply with all requirements set forth in state and federal safety and health standards to which the employer would otherwise be subject, nor shall any provision of

this standard be read or applied in a manner as to abrogate or otherwise limit the liability of employer to fines or other penalties to which it would otherwise be subject for failure to comply with the rules and regulations.

Note: Firms or companies utilizing multiple staff members to conduct safety and health audits may elect not to certify all staff members as safety and health professions so long as the audits conducted by noncertified safety and health professionals are reviewed and approved in writing by the certified safety and health professional on staff.

- (b) Safety and health professional audits.
- (1) Individuals who perform the audit or review functions set forth in this section, shall limit their activities under the standard to the area of their expertise.
- (2) All safety and health professionals granting certifications of effective safety and health programs for employers under this rule shall comply with the following:
  - (A) The certification of an employer's safety and health program shall include an audit which includes both a worksite hazard assessment and an evaluation of the employer's safety and health program.
  - (B) Safety and health professionals performing worksite hazard assessments shall utilize applicable state regulations, as well as recognized safe work practices, as the basis for both the review of worksite safety and health conditions and the recommendation of corrective measures.
  - (C) Wherever industrial hygiene sampling is determined to be necessary during the conduct of the audit, the safety and health professional shall utilize testing protocols which conform to those recommended by the National Institute for Occupational Safety and Health (NIOSH) or HIOSH or both. All sample analyses must be performed by a laboratory that has been accredited by the American Industrial Hygiene Association.
  - (D) The safety and health professional shall include as part of the overall audit, an opening conference which shall include a discussion of the following:
    - (i) The manner in which the audit would be conducted;
    - (ii) The information and other assistance which would be required of the employer in order to allow the safety and health professional to perform their function;
    - (iii) The opportunity for participation of employees or employee representatives in the audit;
    - (iv) The sampling which might be required as part of the audit as well as the sampling protocols which would be utilized;
    - (v) The requirements of this standard with regard to the conduct of audit;
    - (vi) The results of the audit and the employer's right to not disclose those results to the department; and
    - (vii) A reiteration of the voluntary nature of the audit and an explanation that if the employer is uncertain as to their desire to participate in the safety and health audit and, therefore, wishes to withdraw from the audit, action may be taken at any time.

- (E) Upon completion of the audit establishment visit, the safety and health professional will conduct a final closing conference with the employer and employee representatives, if applicable, to discuss the audit findings and recommendations, as well as any other information which the safety and health professional intends to include in the report.
- (F) The safety and health professional shall provide the employer with a written report at the conclusion of the audit. The written report must be forwarded to the employer as soon as practicable following completion of the audit but no more than twenty calendar days from the final closing conference date.
- (G) The audit report shall, at a minimum, contain the following:
  - (i) The name of the safety and health professional performing the audit and the department's certificate number of the safety and health professional. If the report has been reviewed and approved by another certified safety and health professional pursuant to subparagraph (K), the department certificate number of that individual shall also be included;
  - (ii) The name and location of the establishment at which the audit was performed;
  - (iii) The date on which the audit visit was conducted;
  - (iv) The name of the employer for whom the report was prepared;
  - (v) The activity or activities in which the establishment is primarily engaged and a comprehensive synopsis of its work operation;
  - (vi) The number of employees at the worksite;
  - (vii) A complete review of each of the required elements of the safety and health program set forth in chapters 12-60 and 12-110 and an assessment of the employer's compliance with these requirements, including a discussion of the reasons why the program elements have been determined to be adequately met or why deficiencies have been identified;
  - (viii) An identification and description of all safety and health hazards found at the establishment;
  - (ix) A description of all monitoring performed at the establishment, including the methodology used, the identification of the laboratory processing the sample, and the monitoring results achieved;
  - (x) Recommendations for the correction of all safety and health hazards or deficiencies noted during the audit, including either a recommended time frame for correction of each hazard identified or a categorization of the hazards by severity, utilizing the HIOSH protocols established for this purpose; and
  - (xi) A signed statement by the safety and health professional who conducted the audit and prepared the report signifying that the information contained in the audit report is technically accurate and meets the requirements and intent of this standard. If the

- report has been reviewed and approved by another party, a similar signed statement must also be included from that party.
- (H) Reporting and recordkeeping audits shall be maintained by the safety and health professional for a minimum of three years.
  - (3) Employers desiring to receive certifications of effective safety and health programs from certified safety and health professionals shall submit the following information to the auditing safety and health professional after the completion of corrective measures necessary to address hazards and deficiencies noted in the written audit report. The information shall be made a part of the report within fifteen working days:
    - (A) A written report documenting all measures instituted to correct all safety and health hazards or deficiencies in the safety and health program which are noted in the report submitted by the safety and health professional. The report documenting these measures shall also contain a certified statement from the employer indicating that the deficiencies have been corrected and the recommendations of the safety and health professional have been implemented. In lieu of the employer submitting documentation, the safety and health professional who conducted the initial audit may include a signed statement attesting to the employer's compliance during a subsequent audit; and
    - (B) The name, address, and phone number of the employer's designated contact person for the purpose of the audit.
  - (4) Upon review of the submission required above, the safety and health professional will make a determination as to whether the employer has complied with the minimum requirements of this rule, including the institution of appropriate corrective actions and is therefore eligible for the premium discount certificate. If eligible, the safety and health professional shall issue the premium discount certificate to the employer. [Eff 3/29/99; am 2/14/00] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-4.5)

Historical note: Section 12-58-2 is based substantially upon section 12-50-7. [Eff 1/26/96; am 11/16/96; am 4/11/98; R 3/29/99] and section 12-50-8, [Eff 1/26/96; am 11/16/96; am 5/2/97; R 3/29/99]